

REMARKS

Applicant submits, contemporaneously herewith, a Request for Continued Examination pursuant to 37 C.F.R. §1.114.

Claims 1, 3, 5-8, 10, 12, 22, and 23 are pending.

Claim Rejections - 35 U.S.C. §102(b)

Claims 1, 3, 8, 12, and 23 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,936,853 to Fabian et al. ("Fabian '853")

Fabian '853 discloses tibial stem portion 10, shown in Fig. 1, having Morse taper 12 and aperture 13. Referring to Figs. 3 and 4, tibial stem portion 10 attaches to tibial tray portion 20 via Morse taper 12 and female tapered aperture 22. Additionally, stem portion 10 includes a ledge (not labeled) formed between Morse taper 12 and the body of stem portion 10. When Morse taper 12 is inserted within corresponding tapered aperture 22 of tibial tray portion 20, as shown in Fig. 5, the ledge contacts the bottom surface of tibial tray portion 20. Articulating surface member 30, containing bearing surface 34, is removably attached to tray portion 20 via locking lip 31 which engages a cooperating locking lip 23 on tibial tray portion 20. To further lock tibial tray portion 20 and articulating surface member 30 together, locking screw 35 is inserted through aperture 36 of articulating surface member 30 and threadedly engaged with aperture 13 of tibial stem portion 10.

Applicant respectfully submits that independent Claim 1 is not anticipated by Fabian '853, as Fabian '853 fails to disclose each and every limitation called for in independent Claim 1. Specifically, independent Claim 1 calls for, *inter alia*, a tibial plate having a superior surface and an inferior surface, a base extending downwardly from the inferior surface of the tibial plate, an elongate member including a shaft having a superior end and an inferior end and a radially projecting shoulder formed adjacent the superior end, the tibial plate and the base defining a through channel, the elongate member extending through the tibial plate and base superior-distally, *the shoulder of the elongate member seating in the through channel*.

As discussed above, Morse taper 12 of stem portion 10 of Fabian '853 is inserted into tapered aperture 22 of tibial tray portion 20 to secure the components together. As Morse taper 12 is advanced within correspondingly tapered aperture 22, the ledge formed between Morse taper 12 and the body of stem portion 10 contacts the bottom surface of tibial tray portion 20.

This contact prevents stem portion 10 and, correspondingly, Morse taper 12 from being inserted any further into tapered aperture 22. As a result, Fabian '853 fails to disclose or suggest an elongate member having a radially projecting shoulder, *the shoulder seating in a through channel*.

Moreover, due to the interaction of the ledge with the bottom of tibial component 20 and the interaction of Morse taper 12 of stem portion 10 with tapered aperture 22 of tibial tray portion 20, stem portion 10 of Fabian et al. '853 cannot extend *through* tibial plate portion 20, as required by independent Claim 1. Specifically, independent Claim 1 calls for, *inter alia*, a tibial plate having a superior surface and an inferior surface, a base extending downwardly from the inferior surface of the tibial plate, an elongate member including a shaft having a superior end and an inferior end and a radially projecting shoulder formed adjacent the superior end, the tibial plate and the base defining a through channel, *the elongate member extending through the tibial plate and base superior-distally*.

In order for an elongate member to extend *through* a tibial plate and base, the elongate member must enter one side of the tibial plate and base and exit out of the opposite or another side thereof. See *The American Heritage® Dictionary of the English Language, Fourth Edition*. Houghton Mifflin Company, 2004. <http://dictionary.reference.com/browse/through> (accessed: January 17, 2007). In contrast to independent Claim 1, stem portion 10 of Fabian '853 cannot extend *through* tibial tray portion 20 due to both the interaction of the ledge with the bottom of tibial tray portion 20 and the interaction of Morse taper 12 of stem portion 10 with tapered aperture 22 of tibial tray portion 20, as described above.

For the foregoing reasons, Applicant respectfully submits that independent Claim 1, as well as Claims 3, 8, and 12, which depend therefrom, are not anticipated by Fabian '853.

Applicant respectfully submits that amended independent Claim 22 is not anticipated by Fabian '853, as Fabian '853 fails to disclose each and every limitation called for in amended independent Claim 22. Specifically, amendment independent Claim 22 calls for a method of anchoring a tibial implant to a proximal tibia, including the steps of, *inter alia*, seating a tibial plate on the proximal tibia and *extending an elongate member through the tibial plate and into the tibia*. For at least the reasons discussed above with respect to independent Claim 1, stem portion 10 of Fabian '853 cannot be extended *through* tibial plate portion 20, as required by independent Claim 22.

For the foregoing reasons, Applicant respectfully submits that amended independent Claim 22, as well as Claim 23, which depends therefrom, is not anticipated by Fabian '853.

Claim Rejections - 35 U.S.C. §103(a)

Claims 5-7, 10, and 12 are rejected under 35 U.S.C. §103(a) as being obvious over Fabian '853 in view of U.S. Patent No. 6,506,216 to McCue et al. ("McCue '216").

McCue '216 discloses tibial prosthesis 10, shown in Fig. 3, including tibial tray 12 and keel 14. Extending from keel 14 are wing elements 26. Modular stem 42 (Fig. 4) includes mating portion 44, fixation portion 46, and a shoulder (not labeled) formed therebetween. Mating portion 44 is configured to mate with stem element 40 of tibial prosthesis 10.

In rejecting Claims 5-7, 10, and 12, the Examiner relied upon Fabian '853 as disclosing all the limitations of independent Claim 1, from which Claims 5-7, 10, and 12 depend. As indicated above, Fabian '853 does not disclose or suggest *an elongate member extending through a tibial plate and base superior-distally and a shoulder of the elongated member seating in the through-channel*, as required by independent Claim 1. The Examiner's additional citation of McCue '216 fails to overcome this deficiency, as McCue '216 does not disclose or suggest an elongate member including a shaft having a superior end and an inferior end and a radially projecting shoulder formed adjacent the superior end, a tibial plate and base defining a through-channel, *the elongate member extending through the tibial plate and base superior-distally, the shoulder of the elongated member seating in the through-channel*. Specifically, similar to Fabian '853, McCue '216 fails to disclose or suggest modular stem 42 extending *through* tibial tray 12 and, additionally, fails to disclose or suggest the shoulder of modular stem 42 *seated in* tibial tray 12, as required by amended independent Claim 1.

For at least the foregoing reasons, Applicant respectfully submits that Claims 5-7, 10, and 12, which depend from independent Claim 1, are not obvious over Fabian '853 in view of McCue '216.

It is believed that the above represents a complete response to the Official Action and reconsideration is requested. Specifically, Applicant respectfully submits that the application is in condition for allowance and respectfully requests allowance thereof.

Application Serial No. 10/797,663
Amendment dated January 25, 2006
Reply to Office Action dated October 26, 2006



In the event Applicant has overlooked the need for an additional extension of time, payment of fee, or additional payment of fee, Applicant hereby petitions therefore and authorizes that any charges be made to Deposit Account No. 02-0385, Baker & Daniels.

Should the Examiner have any further questions regarding any of the foregoing, he is respectfully invited to telephone the undersigned at (260) 424-8000.

Respectfully submitted,

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CERTIFICATION OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on: January 25, 2007

MATTHEW B. SKAGGS, REG. NO. 55,814

Name of Registered Representative

Signature

January 25, 2007

Date